CF0000060493

(02)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Cr.A.No. 59 of 1998 Division Bench (Criminal)

CRIMINAL APPEAL UNDER SECTION 374 (2)
OF THE CODE OF CRIMINAL PROCEDURE, 1973

Appellant: Devendra alias Devan, aged 27 years,
Accused
(In Jail) son of late Gangaram Sahu, resident of
village Mundera, P.S.Munderdehi,
District Durg, M.P.

versus

Respondent: The State of Madhya Pradesh

...

1.98
N. Sahle
Advocate
Rto. A.R

XI-HC-78

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Criminal Appeal no.59/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
HON'BLE SHRI L.C. BHADOO &
HON'BLE SHRI V.K. SHRIVASTAVA, JJ.

24/10/2005

Shri Arun Kochar, Counsel for the appellant.

Shri G.K. Beriwal, Dy. Advocate General for the State/respondent.

Oral order.

Today this matter has been listed for disposal of M.Cr.P. Nos. 2302/2003 & 2318/2005 for suspension of sentence and grant of bail during pendency of this appeal.

Counsel for the accused/appellant submits that the accused is in custody for the last about eight years, therefore, the appeal itself may be heard for final disposal. Accordingly, with the consent of counsel for both the parties the arguments on appeal were heard.

By this appeal the accused/appellant has questioned the legality of conviction and sentence dated 19/12/1997 passed by learned 3rd Additional Sessions Judge, Durg in Sessions Trial No. 288/97 whereby learned 3rd Additional Sessions Judge, Durg, after holding the accused/appellant guilty for commission of the offence under Section 302 of the I.P.C., for committing the murder of his mother namely Panchobai, sentenced him to undergo imprisonment for life and to pay fine of Rs.2,000/-, in

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

default of payment of fine to further undergo R.I. for six months.

Brief facts leading to filing of this appeal are that on 12/06/1997 at about 8.00 a.m. in Village Mundera the accused/appellant assaulted his mother Panchobai with the club on her head as a result of which she succumbed to the injuries. The matter was reported to the Police Station Gunderdehi at about 7.00 p.m. by Ku. Manju (PW/8) daughter of the deceased. On receiving the report, Station House Officer, Police Station, Gunderdehi registered the Crime Number 57/97 and proceeded to the place of occurrence, prepared the Panchnama of the body and the body of Panchobai was sent for post-mortem examination to Doctor R.N. Pandey (PW/5) District Hospital, Durg, who conducted the postmortem and prepared the postmortem report (Ex.P/5). In the opinion of Doctor, the cause of death was due to shock and haemorrhage as a result of head injury. After completion of the investigation, charge-sheet was filed against the accused/appellant in the Court of Judicial Magistrate, First Class, Durg, who in turn, committed the case for trial to the Sessions Judge, Durg, from where learned 3rd Additional Sessions Judge, received the case on transfer. Learned 3rd Additional Sessions Judge after hearing the arguments and perusal of the record, was of the opinion that prima facie, offence under Section 302 of the I.P.C., was made

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

out against the accused/appellant, accordingly framed the charge against the appellant who denied the charge and claimed to be tried.

The prosecution in order to prove the offence against the accused/appellant examined as many as ten witnesses. On the other hand, statement of the accused/appellant was recorded under Section 313 of the Cr.P.C., in which he denied the material evidence appearing against him and stated that he is innocent and has not committed the offence and produced a witness namely Smt. Tripta Sahu in his defence. Learned 3rd Additional Sessions Judge after hearing the arguments of counsel for the accused/appellant, convicted and sentenced the accused in the manner mentioned above.

We have heard learned counsel for both the parties.

As far as the death of deceased Panchobai being homicidal is concerned, the same is not disputed by learned counsel for the accused/appellant. Apart from that, in view of the evidence of P.W/1 – Latabai and PW/8 Ku. Manju eyewitnesses and the evidence of PW/5 Doctor R.N. Pandey, it stands proved that the death of Panchobai was homicidal in nature.

Now coming to the involvement of the accused/appellant in committing the crime in question, same has also not been disputed by counsel for the accused/appellant. P.W.1-Latabai has categorically stated that on the fateful day at about 8.00

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a.m. the accused assaulted Panchobai with the club on her head as a result of which she fell down on the ground. She being frightened left the scene. PW-8 Ku. Manju has categorically corroborated the evidence of P.W.1 Latabai and has stated that on the fateful day the wife of accused started quarrelling with Panchobai. She was demanding share in the compensation amount which was received by Panchobai in respect of death of her husband, during that time accused came there with lathi and assaulted Panchobai with the same on her head as a result of which Panchobai fell on the ground. The accused left the scene of occurrence. Therefore, in view of the above the ocular evidence, the trial Court has rightly held the accused guilty for commission of the offence of murder of his mother Panchobai. We do not find any ground to interfere with the finding of the trial Court.

Learned counsel for the accused/appellant argued that the deceased received a single injury on her head which is evident from the Doctor's evidence and post-mortem report, therefore, from the fact and the above evidence offence does not travel beyond Section 304 Part 2 of the I.P.C., and there is no evidence on record which shows that the accused assaulted his mother Panchobai with intention to cause her death.

On the other hand, learned State Counsel supported the finding of the trial Court.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Having heard learned counsel for the parties, we have perused the evidence and find that the argument advanced by learned counsel for the accused/appellant is not without basis. PW/8 Ku. Manju who is the daughter of the deceased and sister of the accused in para-2 of her evidence has categorically stated that the wife of the accused started quarreling with her mother on a small matter and she was saying that the deceased had not given any amount to them out of which was received by her on account of the death of her husband. In the meantime, the accused came with a lathi and assaulted Panchobai on her head and left the place. The evidence of PW/1 Latabai is also similar to that of the evidence of PW/8 Ku. Manju. The postmortem report is (Ex.P/5). Perusal of the report shows that there was one injury of contusion of the size of 3 x 2" over the head on right temporal region. Right frontal, parietal, temporal bones were fractured and as per the evidence of PW/5, Doctor R.N. Pandey there was one injury on the head and on opening of the head bone beneath the injury was found fractured. There is nothing on record which goes to show that the accused assaulted his mother with intention to cause her death. It appears from the evidence of prosecution witnesses that when the wife of accused was quarrelling with the deceased, accused came with a lathi and assaulted on her head with the same on a

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

spur of moment in a heat of passion without any preparation or pre-meditation. Looking to the circumstances and weapon of offence it cannot be said that the accused assaulted the deceased with intention to cause her death. However, it can safely be inferred that the accused had knowledge that by causing injury with a lathi, he may likely to cause the death of Panchobai. Therefore, from the above facts the offence under Section 304 Part 2 of the I.P.C., was made out and the ingredients of offence punishable under Section 302 of the I.P.C. were not satisfied, therefore, on this count the finding of the trial Court regarding conviction under Section 302 of the I.P.C. cannot be sustained.

In the result, the appeal partly succeeds and the conviction under Section 302 of the I.P.C., and the sentence of life imprisonment are set aside. Instead thereof, the accused/appellant is convicted for offence under Section 304 Part 2 of the I.P.C., and sentenced to undergo R.I. for eight years.

In view of the above, M.Cr.P.Nos. 2302/2003 and 2318/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
V.K.Shrivastava
Judge

Raju